

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

ORIGINAL FILED

JUL 26 2004

LARRY W. PROPPES, CLERK
COLUMBIA, SC

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

LEONARD CHEMICAL COMPANY CO.,
INC., LAWRENCE K. LEONARD, BASF
CORPORATION, COLEMAN CABLE, INC.,
DMC, INC., THE GENERAL ELECTRIC CO.,
K2, INC., REXHAM, INC., SPRINGS
INDUSTRIES, INC., THE STANLEY WORKS,
STATE PRINTING, TEXTRON, INC., and
TORRINGTON COMPANY, INC.,

Defendants.

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CIVIL ACTION NO.

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF ACTION

1. Plaintiff, the United States of America, brings this civil action under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607(a), for injunctive relief and for the recovery of response costs incurred and to be incurred by the United States for

response actions performed at and in connection with the Leonard Chemical Company, Inc. Superfund Site in York County, South Carolina.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases or threatened releases of hazardous substances that give rise to these claims occurred in this district and because the Leonard Chemical Company, Inc. Superfund Site is located in this district.

THE SITE

4. The Leonard Chemical Company, Inc. Superfund Site (the "Site") consists of approximately 7.1 acres of land in an industrial area located about half mile east of Catawba, York County, South Carolina, and nine miles southeast of Rock Hill, South Carolina. The Site is in York County on Curet on Ferry Road (State Route 697).

DEFENDANTS

5. Defendants Leonard Chemical Co., Inc., BASF Corporation, Coleman Cable, Inc., DMC, INC., The General Electric Company, K2, INC., REXHAM, Inc., SPRING INDUSTRIES, INC., THE STANLEY WORKS, State Printing, TEXTRON, INC., and Torrington Company, Inc. are corporations doing business in the state of South Carolina. Lawrence K. Leonard is a "person," as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

HISTORY OF THE SITE

6. The Leonard Chemical Company, Inc. operated the Site as a facility for the waste solvent treatment, storage, and disposal of hazardous substances and waste from, 1966 through the early 1980s, when South Carolina Department of Environmental Health order the company to cease all operations on the Site.

7. The Leonard Chemical Company, Inc. provided disposal, treatment and storage services for its customers, North Carolina and South Carolina manufacturers of paint and ink, printers, and other users of these materials. LCC employed cleaning processes that generated waste solvents containing alcohols, ketones, and chlorinated hydrocarbons. Lawrence Leonard, former operator of the Site (doing business as LCC), stored or disposed of the waste sludge (still bottoms) generated by the distillation process carried out on-site. As part of its operations at the facility, the company disposed of waste still bottoms containing hazardous substances at various areas on the Site by burial of containers of hazardous substances in the soil and dumping un-containerized waste in a marshy area behind the former facility.

8. When the facility ceased operations, the soil and the groundwater at the site were sampled and found to contain metals and VOCs including, but not limited to, lead, tetrachloroethene (PCE), trichlorethene (TCE), and toluene. Each of these contaminants is a hazardous substance as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

9. In February 1983, LCC removed, under SCDHEC supervision, 116 empty drums from the Site.

10. In 1983, a contractor for SCDHEC conducted a removal operation at the Site, with funding by 16 of LCC former customers. The contractor removed from the Site and properly disposed of liquid waste found in 3,957 drums, various storage tanks (and the containers themselves), 544 cubic yards of landfill material, and 66 cubic yards of contaminated soil from the nearby Ferry Branch creek and on-site storage area.

11. On September 21, 1984 EPA listed the Site on the National Priorities List.

12. On March 23, 1987, EPA advised SCDHEC by letter that it intended to assume the lead of investigation and remedial action at the Site.

13. From 1991 to 1995, Defendants and others conducted a Remedial Investigation and Feasibility Study under an EPA Administrative Order by Consent at the Site to fully scope out the extent of contamination.

CERCLA STATUTORY SCHEME

14. Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.

15. The President's authority under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), has been lawfully delegated to the Regional Administrator of Region 4 of EPA.

16. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section-

(1) the owner and operator of a ... facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances,

... from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government. . .not inconsistent with the national contingency plan

17. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that “the amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D).”

18. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides that in

actions for recovery of costs, "the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."

19. Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), defines a "facility" as, "... any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located"

20. Section 101(29) of CERCLA, 42 U.S.C. § 9601(29) defines "disposal" in pertinent part as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any... hazardous waste into or on any land or water so that such... hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters."

21. Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) defines a "release" in pertinent part as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)".

GENERAL ALLEGATIONS

22. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

23. "Releases" of "hazardous substances" within the meaning of Sections 101(14) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(14) and 9601(22), occurred at the Site during operation of the Site.

24. A "disposal" of hazardous substances within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), occurred during the time Defendant owned the Site.

25. Each Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

26. Each Defendant is a liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

27. In response to releases or threats of releases at the Site, EPA has conducted "response actions" at the Site within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

28. The costs incurred by the United States as a result of the releases or threatened releases of hazardous substances at the Site are "response" costs within the meaning of Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a).

29. The response costs incurred by the United States were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300, promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605.

30. As of August 31, 2001, the United States has incurred response costs of at least \$214,617.85, exclusive of interest, as a result of the releases or threatened releases of hazardous substances at or from the Site.

31. Pursuant to Section 107(a), 42 U.S.C. § 9607(a), interest on past expenditures is accruing and will continue to accrue. EPA sent a General Notice of Liability/Demand letter to Defendants October 30, 1990. Pursuant to Section 107(a), 42 U.S.C. § 9607(a),

interest on those costs demanded in the General Notice of Liability/Demand letter begins to accrue from the date of the letter sent to the Defendant.

32. The United States is continuing to incur further response costs, including costs of enforcement.

FIRST CLAIM FOR RELIEF

33. The allegations contained in paragraphs 1 through 32 above are incorporated in this claim for relief as if fully set forth herein.

34. Section 106 of CERCLA, 42 U.S.C. § 9606, provides that when EPA determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substances from a facility, EPA, through the Department of Justice may bring an action to secure such relief as may be necessary to abate the danger or threat at the Site.

35. EPA has determined that there was or is an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances from the Site, and that investigatory and remedial action is necessary to address these releases.

36. Under CERCLA Sections 106(a), 42 U.S.C. § 9606(a), Defendants are jointly and severally liable for injunctive relief, including implementation of an Remedial Design/Remedial Action for the purposes of fully addressing the nature and extent of contamination in and around the Leonard Chemical Company, Inc. Superfund Site, including the implementation of methodologies necessary for cleaning up any such

contamination in order to protect public health and/or the environment.

SECOND CLAIM FOR RELIEF

37. Paragraphs 1 through 32 are realleged and incorporated herein.

38. The United States has undertaken response actions at the Site and has incurred response costs, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in response to the release or threatened release of hazardous substances into the environment from the Site, within the meaning of Section 101(14) and (22) of CERCLA, 42 U.S.C. § 9601(14) and (22).

39. Pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), the United States has incurred response costs at and in connection with the Site not inconsistent with the national contingency plan.

40. Defendants are liable to Plaintiff pursuant to Section 107(a)(1), (2), and (3) of CERCLA, 42 U.S.C. § 9607(a)(1), (2), and (3), for all of Plaintiff's unreimbursed response costs incurred in connection with the Site, and are also liable pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), for all of Plaintiff's future response costs, if any, incurred in connection with the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States prays, that this Court:

1. Enter against Defendants, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), a declaratory judgment on liability against Defendants Leonard Chemical Company, Inc., Lawrence K. Leonard, BASF Corporation, Coleman Cable, Inc., DMC, INC., The General Electric Company, K2, INC., REXHAM, Inc., SPRING

INDUSTRIES, INC., THE STANLEY WORKS, State Printing, TEXTRON, INC., and Torrington Company, Inc. are persons or corporations doing business in the state of South Carolina that will be binding on any subsequent action to recover further response costs incurred by the United States;

2. Require Defendants to take all actions necessary to remedy the conditions at the Leonard Chemical Company, Inc. Superfund Site in York County, South Carolina, including implementing the Remedial Design/Remedial Action designated by EPA;

3. Require Defendants to reimburse the United States for all response costs incurred at the Site; and

4. Provide such other relief as the Court may deem just and appropriate.

Respectfully submitted,

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